



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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Assembly Bill 715

Assembly Committee on Forestry

Department of Natural Resources Testimony
Kathryn J. Nelson, Forest Tax Policy Chief
Division of Forestry
Bureau of Forest Management
February 17, 2010

Mr. Chairman and Committee Members:

Good morning. My name is Kathy Nelson and I am the Forest Tax Policy Chief within the DNR's Bureau of Forest Management. I appreciate this opportunity to appear before you to discuss Assembly Bill 715.

AB 715 attempts to restrict the ability of individual private landowners to divide their landownership into smaller ownerships and then to enter those ownerships into the Managed Forest Law (MFL) program as closed to public recreation. The conditions established by AB 715 include:

1. Lands were a part of a larger parcel under a single ownership in a single municipality,
2. Lands exceeded 1,000 acres in size as of January 1, 2009,
3. Lands were not subject to a contract under the Forest Crop Law (FCL) or Woodland Tax Law (WTL), or an order under the Managed Forest Law (MFL).

Landowners who meet the criteria of AB 715 may only enter their lands into MFL as open to public access. The incentive to subdivide larger properties into small units for the purpose of entering the entire ownership into MFL as closed to public access would be eliminated.

As you know, the MFL program was enacted in 1985 to provide an incentive for private landowners to practice sustainable forestry on their lands. MFL struck a balance between private landowners' interest in entering the MFL program and the public's desire to support the program. Landowners were allowed to pay an acreage share tax instead of regular ad valorem property taxes and were given in depth assistance in forest management practices. Landowners paid their deferred property taxes when timber was harvested.

Private forests provide an array of benefits to the public. These benefits include clean air, clean water, wood products, settings for recreation and tourism, wildlife habitat, carbon sequestration and scenic beauty. Our forests generate jobs throughout Wisconsin and contribute billions in value to Wisconsin's economy. Forests are an essential element of Wisconsin's landscape and the places where millions of us live, work and recreate. MFL is a key tool in keeping forested land in forest and providing these benefits to both present and future generations.

One major public benefit that MFL provides is access to private lands for hunting, fishing, hiking, sight-seeing and cross-country skiing. Landowners are allowed to close up to 160 acres of land to

public access, with the intent that the remaining lands would be left open to public access. Owners can be an individual person, a group of people, or entities, such as corporations or partnerships. The drafters of MFL worked to strike a balance between the desires of the public for land on which to recreate, and the interests of landowners to restrict who can recreate on their properties. The size limitation was an effective approach to balance those interests.

Through the course of time, landowners have learned to divide their properties so that they may take advantage of the MFL program's closed acreage limits. Small landowners have divided their properties so that a husband and wife can have 3 properties, his, hers and theirs. Large landowners have divided their properties so that they can have any number of ownerships through the creation of limited liability corporations. AB 715, like its companion bill in the senate SB 300, attempts to remove the incentive for dividing lands into smaller ownerships for the purpose of entering more lands as closed to public access.

To implement AB 715 the department would be required to develop a one-time database to determine which lands met the criteria established by the bill as of January 1, 2009. This database would be used to screen future MFL applications in order to advise landowners of their options for closing lands. This database becomes more critical with time.

Reviews of deeds and tax statements occur during the entry process; however the review is done solely for the purpose of determining current ownership. AB 715 would require the department to determine past ownership of lands as well. Title searches may be required on future MFL entries and transfers. These title searches may be relatively easy at first, but would become more difficult with time since the trend is to subdivide ownerships into smaller, more fragmented units. The department would work with county land offices to develop a permanent record or map of land ownership as of January 1, 2009 to assist in this determination.

Costs associated with the creation of this database are not provided by AB 715. County Land Offices would need to provide the raw data for lands that meet the criteria established by AB 715. Open records requests are roughly \$50 to \$100 per request, with some counties charging more. The costs of an open records request would be paid by the department from existing budgets, which have already been reduced due to the state's economic downturn. The department requests that funds are made available to create this database in order to effectively and easily implement AB 715.

I appreciate this opportunity to share with you the department's review of AB 715 and would be glad to answer any questions you might have.



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STATE REPRESENTATIVE ♦ 42ND ASSEMBLY DISTRICT

Public Hearing
Committee on Forestry
Wednesday, February 17, 2010
1:00pm, Rm. 415 NW

Testimony – AB 715

Parcels of MFL lands which were part of large enrollments

Since its inception in 1985, the Managed Forest Law (MFL) has been a powerful tool for encouraging the sustainable management of private forest lands, and ensuring these lands provide an array of public benefits that include access for recreation, clean air and clean water, wildlife, and supporting the state's forest products industry. MFL provides forest landowners with deferred property taxes in return for a commitment to practicing sustainable forestry.

Currently, 3.04 million acres of forestland, or 19% of Wisconsin's 16 million acres of forestland are enrolled in MFL, representing over 44,052 individual enrollments including both private owners, and various forms of trusts, LLC's, and corporations.

MFL lands can be enrolled as "open" to public access; however by paying a higher per acre fee, owners can enroll up to 160 acres per municipality in MFL as "closed" to public access. This gives small property owners the flexibility to limit public access, while assuring that large properties, including those owned by industry or investors, still provide public access for hunting and recreation.

In recent years large owners (those owning more than 1,000 acres) have increasingly skirted the intent of the 160 acre closed limit by subdividing and re-titling larger properties, and then enrolling them separately in MFL. This problem has been happening for many years, and it must be addressed to protect the integrity of the MFL program.

The bill specifies that a parcel of land enrolled in MFL may not be closed to public access if the land was, on January 1, 2009, part of a parcel under single ownership that exceeded 1,000 acres in size, in a single municipality. The Wisconsin Department of Natural Resources uses 1000 acres as a threshold to determine whether an owner is eligible for treatment as a "large block" enrollment in MFL.

The credibility of and long-term support for the MFL depends upon its ability to deliver clear public benefits, including recreational access. This bill will help assure that citizens can continue to enjoy the access to outdoor recreation opportunities the MFL was designed to provide.

**Town of Goodman
Marinette County, Wisconsin
P.O. Box 306
Goodman, WI 54125**

2/16/10

To: Assembly Committee on Forestry

Re: AB715

As you are well aware, large land owners in Wisconsin are taking advantage of the Closed Managed Forest Land program and entering multiple 160-acre parcels under the guise of separate ownership.

The Coleman Lake Club, located in the Town of Goodman in Northwestern Marinette County has formed 56 Limited Liability Companies each owning roughly 160 acres for explicit entry in the MFL program.

The Town of Goodman appealed these MFL entries to the DNR. On October 29, 2009, Kathy Nelson, Forest Tax Section Chief, issued a letter denying the Town's appeal. She states, "The department cannot deny entry of lands if landowners have chosen to create Limited Liability Corporations (LLC) prior to applying for MFL entry. LLCs are considered individual ownerships under s. 183, Wis. Stats. and each entity is given full recognition by the State of Wisconsin." The Town's basis for appeal is that there really is only one owner of this property and that the DNR should investigate the LLCs further to determine the true ownership of the property. The DNR chose not to look into the matter in further detail.

The Town is now appealing the DNR's decision via Administrative Agency Review in Marinette County Circuit Court. Attached is the Coleman Lake Club's Statement of Position filed with the Court. In this Statement of Position, the Coleman Lake Club "asserts that the Coleman Lake Club is the sole, managing member of each of limited liability companies comprising the Coleman Lake Club properties at issue in this action." This statement clearly shows that there is one underlying owner of these properties and therefore this one owner has nearly 8,500 acres to be entered into the MFL program. This clearly violates the intent of the Closed MFL Law.

Entry of the Coleman Lake Club property into the Closed MFL program would take \$15,756,537 from the Equalized Value of the Town of Goodman; property tax rates in Goodman will increase by roughly \$2.06 per \$1,000 of assessed value or \$206 per \$100,000 of value. Additionally, \$55,000 of the Goodman Armstrong Creek School District Levy will be shifted to Armstrong Creek residents thus increasing property taxes roughly \$1.32 per \$1,000 of assessed value in the Town of Armstrong Creek. Also, with the drop in Equalized Value, there is no guarantee that State School Aids will cover any of the lost revenues to the School District.

We are asking that the Assembly Committee on Forestry support this Legislation to stop large land owners from taking advantage of the Closed MFL program forcing rural residents to carry a larger burden of taxation. This type of corporate greed should not be allowed. Please move this Bill on for consideration in the Full Assembly.

Respectfully submitted on behalf of the Taxpayers of the Town of Goodman.



Steve Gostisha
Supervisor, Town of Goodman

TOWN OF GOODMAN,

Petitioner,

Case No. 09-CV-0588

v.

Code No(s). 30607 (Administrative
Agency Review)

STATE OF WISCONSIN DEPARTMENT OF
NATURAL RESOURCES,

Respondent.

STATEMENT OF POSITION

The Town of Goodman (the "Town") served on the Coleman Lake Club (the "Club")¹ its Petition for Review of Administrative Decision ("Petition") in the above-captioned action pursuant to Wis. Stat. § 227.53(1)(c). Pursuant to § 227.53 and as a party to the proceedings in which the decision the Town seeks to be reviewed, the Club, by and through its attorneys, Godfrey & Kahn, S.C., responds to the Petition, as follows:

1. Asserts that the decision of the Wisconsin Department of Natural Resources (the "WDNR") referred to in the letter attached as Exhibit A to the Petition speaks for itself, and denies any remaining allegations of paragraph 1.
2. Denies the allegations of paragraph 2.

¹ The Town served the Club on December 15, 2009. The Club is the sole, managing member of the 56 LLCs that individually own the Coleman Lake Club properties that are the subject of the underlying decision of the Wisconsin Department of Natural Resources and this action: CLC 001 LLC; CLC 002 LLC; CLC 003 LLC; CLC 004 LLC; CLC 005 LLC; CLC 006 LLC; CLC 007 LLC; CLC 008 LLC; CLC 009 LLC; CLC 010 LLC; CLC 011 LLC; CLC 012 LLC; CLC 013 LLC; CLC 014 LLC; CLC 015 LLC; CLC 016 LLC; CLC 017 LLC; CLC 018 LLC; CLC 019 LLC; CLC 020 LLC; CLC 021 LLC; CLC 022 LLC; CLC 023 LLC; CLC 024 LLC; CLC 025 LLC; CLC 026 LLC; CLC 027 LLC; CLC 028 LLC; CLC 029 LLC; CLC 030 LLC; CLC 031 LLC; CLC 032 LLC; CLC 033 LLC; CLC 034 LLC; CLC 035 LLC; CLC 036 LLC; CLC 037 LLC; CLC 038 LLC; CLC 039 LLC; CLC 040 LLC; CLC 041 LLC; CLC 042 LLC; CLC 043 LLC; CLC 044 LLC; CLC 045 LLC; CLC 046 LLC; CLC 047 LLC; CLC 048 LLC; CLC 049 LLC; CLC 050 LLC; CLC 051 LLC; CLC 052 LLC; CLC 053 LLC; CLC 054 LLC; CLC 055 LLC; CLC 056 LLC.

3. To the extent paragraph 3 states a legal conclusion on the construction of Wis. Stat. § 77.01, no response is required. Denies that § 77.01 is accurately quoted and the remaining allegations of paragraph 3.

4. Denies the allegations of paragraph 4.

5. To the extent paragraph 5 states a legal conclusion, no response is required. Denies all factual allegations in paragraph 5. Asserts that the Coleman Lake Club is the sole, managing member of each of the limited liability companies comprising the Coleman Lake Club properties at issue in this action.

6. Denies the allegation in paragraph 6 that the Town is entitled to a hearing in this action.

AFFIRMATIVE DEFENSES

The Petition should be dismissed because it fails to state facts sufficient to show that the Town has been aggrieved by the decision of the WDNR to include the Coleman Lake Club properties in the Managed Forest Law program, and for failure to state a claim upon which relief may be granted.

WHEREFORE, the Club requests judgment dismissing the Town's Petition in its entirety; for costs and fees in this matter; and for such other and further relief as the nature of the case may require or as may be determined to be just, equitable, and proper by this Court.

Dated this 29th day of December, 2009.

Respectfully Submitted,

GODFREY & KAHN, S.C.

By: Winston A. Ostrow

Winston A. Ostrow
State Bar No. 1016942
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State Bar No. 1038324

Attorneys for Coleman Lake Club

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